



Federal Communications Commission
Office of the Secretary
Washington, D.C. 20554

March 10, 2005

ORIGINAL

Charles W. Logan
Lawler, Metzger, Milkman & Kenney, LLC
2001 K Street, NW
Washington, D. C. 20006

RE: Motion to Accept Ex Parte Presentation
As Timely Filed In WT Docket No. 02-55

Dear Mr. Logan::

The Office of the Secretary has received your request for acceptance of the Ex Parte Presentation filed by Nextel Communications in the above-referenced proceeding as timely filed, due to technical difficulties with the Commission's Electronic Comment Filing System (ECFS).

In accordance with 47 C.F.R. Section 0.231(i), I have reviewed your request and verified your assertions. After considering the relevant arguments, I have determined that the Ex Parte Presentation will be accepted as timely filed on March 7, 2005. If we can be of further assistance, please contact the Office of the Secretary.

Sincerely,

A handwritten signature in cursive script, reading "Marlene H. Dortch", is written over the typed name.

Marlene H. Dortch
Secretary

CC: Wireless Telecommunications Bureau

LAWLER, METZGER, MILKMAN & KEENEY, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

CHARLES W. LOGAN
PHONE (202) 777-7724

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March 8, 2005

By Hand Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: WT Docket No. 02-55

Dear Ms. Dortch:

Transmitted herewith are an original and four copies of two filings that we attempted to file numerous times via the FCC's Electronic Comment Filing System (ECFS) on Monday evening, March 7, 2005. As shown on the attached ECFS error messages we received last night and as discussed today with FCC staff, ECFS was malfunctioning and prevented parties from filing submissions in the record of this docket yesterday evening.

Please accept the two attached documents as timely filed in WT Docket No. 02-55 on March 7, 2005, given the circumstances described above.

If you have any questions or require anything further, please do not hesitate to call.

Sincerely,


Charles W. Logan

Enclosures

cc: William Caton
Michael Wilhelm

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 **Federal Communications Commission**

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March 7, 2005

BY ELECTRONIC FILING

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 02-55
Ex Parte Presentation

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MAR - 8 2005
Federal Communications Commission
Office of Secretary

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MAR - 7 2005

Dear Mr. Muleta:

Nextel Communications ("Nextel") respectfully submits the "Letters of Cooperation" required by paragraph 344 of the Report and Order ("R&O") in the above-captioned proceeding,¹ as modified by subsequent errata and orders that have been issued by the Commission.²

Paragraph 27 of the *Supplemental Order* clarified that Nextel must provide to the Commission letters demonstrating commitments from its corporate partners, subsidiaries, or affiliates that those entities would cooperate with Nextel and the Commission in the 800 MHz band reconfiguration process. The Commission referenced two parties that it believed met this standard: Nextel Partners, Inc. ("Nextel Partners") and Nextel International, Inc. ("NII"). Nextel hereby provides a letter from Nextel Partners and an explanation for why it does not believe that NII meets the Commission's criteria for submission of a letter of cooperation.

I. Nextel Partners

During the course of this proceeding, Nextel Partners committed itself to participate in the system relocations, license swaps, and associated actions and procedures involving its 800 MHz licenses necessary to effectuate the Consensus Plan for 800 MHz realignment. See Comments of Nextel Communications, Inc. and Nextel Partners Inc., WT Docket 02-55, at 3 (Feb. 10, 2003). Nextel currently owns a 32%

¹ See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969, ¶¶ 325, 344 (2004) ("R&O").

² See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, Erratum (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd 19651 (2004); Public Notice, "Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," 19 FCC Rcd 21492 (2004); Third Erratum, 19 FCC Rcd 21818 (2004); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 24708, ¶ 27 (2004) ("Supplemental Order"); Erratum, WT Docket No. 02-55 (rel. Jan. 19, 2005).



interest in Nextel Partners and both Nextel and Nextel Partners consider Nextel Partners an affiliate of Nextel. Accordingly, attached is a letter from Nextel Partners reconfirming its commitment to retuning its systems and cooperating in the license swaps and associated actions and procedures necessary to complete reconfiguration of the 800 MHz band as set forth in the *R&O*.

II. Nextel International, Inc.

The *Supplemental Order* (§ 27, footnote 61) suggests that NII may possibly be an "affiliate" of Nextel and Nextel should therefore obtain a letter of cooperation from NII. Nextel owns a small (20%) ownership interest in NII, a U.S. company which through its subsidiaries owns and operates 800 MHz iDEN networks outside of the U.S. and is a roaming partner with Nextel. As described further below, however, Nextel's relationship with NII is such that Nextel cannot be deemed to have financial or other control or significant influence over NII. Without such control or influence or the ability to order NII to perform, Nextel cannot require that NII provide Nextel (or the Commission) a letter of cooperation, and consequently believes that NII should not be deemed an affiliate of Nextel for purposes of complying with the requirements set forth in paragraph 344 of the *R&O* and paragraph 27 of the *Supplemental Order*.

Nextel hereby provides an explanation regarding Nextel's ownership interest in NII and how under the Financial Accounting Standards Board ("FASB") rules, Nextel would not be deemed in control of NII.

In accordance with paragraph 2 of Accounting Research Bulletin No. 51, "*Consolidated Financial Statements*", "[t]he usual condition for a controlling financial interest is ownership of a majority voting interest...". Nextel owns less than a 20% stock ownership interest in NII; therefore, we conclude that Nextel does not have a controlling financial interest in NII.

Additionally, Accounting Principles Board No. 18, "The Equity Method of Accounting for Investments in Common Stock," paragraph 17, provides guidance regarding an entity's ability to exercise significant influence over operating and financial policies of an investee (NII in this case) even though the investor (Nextel in this case) holds 50% or less of the voting stock. In applying the guidelines outlined in that paragraph, we also conclude that Nextel does not exercise significant influence over NII.

Our analysis includes consideration of the following:

Lack of protective/participating rights - Nextel does not have any minority shareholder protective or participating rights.

Liquidation rights - Nextel has no preference in liquidation above other NII shareholders.

Continued Investment - Nextel is not required to provide any continuing investment in NII.

Ability to exert significant influence - Factors that were considered included:

- **Board representation:** Since March 2004, Nextel has not had any representation on the NII Board of Directors.
- **Technology:** NII has its own independent relationships with Motorola and negotiates its own contracts for infrastructure and handsets with Motorola.
- **Intercompany Transactions/Participation in Policy Making Process and Interchange of Managerial Personnel:** Nextel does not have any involvement in the policy making process of NII, nor is there an interchange of managerial personnel.

Nextel and NII are and have been parties to roaming agreements whereby customers of each company can roam onto the other's networks. These agreements are typical of roaming agreements that are common in the wireless industry and are priced at market rates.

As described above, Nextel's limited stockholder ownership interest carries with it no special rights or powers of control over NII. Because Nextel exerts no "control" or special influence over NII, Nextel believes it is inappropriate for the Commission to require Nextel to obtain a letter of cooperation from NII regarding 800 MHz band reconfiguration. While Nextel is confident that NII will work with Nextel to accomplish 800 MHz band reconfiguration in the U.S./Mexico border area due to the need to maintain our mutually beneficial roaming arrangements, Nextel could not obtain a letter from NII committing them to formerly undertake any particular technical or financial obligation.

Sincerely,

/s/ James G. Goldstein
James B. Goldstein
Senior Attorney – Government Affairs
Nextel Communications

cc: Catherine Seidel
Michael Wilhelm
Jeffrey Dygert
Elizabeth Lyle

March 7, 2005

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **Letter of Cooperation of Nextel Partners, Inc.;**
WT Docket No. 02-55

Dear Ms. Dortch:

Nextel Partners, Inc. ("Nextel Partners") respectfully submits this "Letter of Cooperation," as required by paragraph 344 of the Report and Order ("R&O") in the above-captioned proceeding,¹ as modified by subsequent errata and orders that have been issued by the Commission.²

We are pleased to inform you that Nextel Partners and Nextel Communications, Inc. have reached an agreement regarding their mutual rights and responsibilities with respect to the R&O. With that agreement in place, Nextel Partners hereby confirms its commitment to retune its systems and cooperate in the license swaps and associated actions and procedures necessary to complete reconfiguration of the 800 MHz band as set forth in the R&O.

¹ See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd. 14969, ¶¶ 325, 344 (2004) ("R&O").

² See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, Erratum (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd. 19651 (2004); Public Notice, "Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," 19 FCC Rcd. 21492 (2004); Third Erratum, 19 FCC Rcd. 21818 (2004); Supplemental Order and Order on Reconsideration, 19 FCC Rcd. 24708, ¶ 27 (2004) ("Supplemental Order"); Erratum, WT Docket No. 02-55 (rel. Jan. 19, 2005).

Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald J. Manning", with a stylized flourish at the end.

Donald J. Manning
Vice President and General Counsel

cc: Catherine Seidel
Michael Wilhelm
Jeffrey Dygert
Elizabeth Lyle
Geoffrey M. Stearn